

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DOROTHY HOULIHAN,	)	
Plaintiff,	)	C.A. No. 05-00194 JJF
	)	
v.	)	
SUSSEX TECHNICAL SCHOOL DISTRICT,	)	
SUSSEX TECHNICAL SCHOOL DISTRICT	)	TRIAL BY JURY OF TWELVE
BOARD OF EDUCATION, SANDRA WALLS-	)	DEMANDED
CULOTTA, individually, and in her official	)	
capacity, and STEVEN HUBER, individually, and	)	<b>E-FILE</b>
in his official capacity,	)	
	)	
Defendants.	)	

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR A STAY PENDING A  
DECISION BY THE UNITED STATES  
SUPREME COURT IN *GARCETTI V. CEBALLOS***

1. Plaintiff states: "[a]ssuming Plaintiff's causes of action survive the Motion to Dismiss, there is absolutely no reason for the parties not, at the very least, to proceed with discovery."

This position obviously depends on an assumption; the assumption that Plaintiff's cause of action will survive the pending motion to dismiss. Defendants' Motion for a Stay, however, focuses on whether the Court should proceed with a decision on the Motion to Dismiss, arguing that it should not. To do so could result in a waste of judicial resources as the Court may well expend time and energy deciding an issue which could be overturned in short order.

2. Defendants acknowledge that the discovery necessary for Plaintiff's Rehabilitation Act (RA) claims and her First Amendment claims will overlap. The issue of whether discovery should be stayed, however, is premature. This issue only becomes relevant *after* the court determines that the RA claim survives the Motion to Dismiss. Staying the case, thereby delaying a decision on the Motion to Dismiss until the U.S. Supreme Court has decided *Garcetti v. Ceballos*, 2004 WL 2260964 (U.S.) (Mot. Exh. C), will also avoid duplication of effort on the Court's part associated with having to decide the motion in a piecemeal fashion.

3. Plaintiff argues that the Court's decision in *Garcetti* may well not be dispositive of the First Amendment issue because to the extent that the Court holds that purely job related speech is not protected by the First Amendment, the focus for argument will turn to whether Plaintiff's speech was purely job related. Only a cursory review of Plaintiff's Complaint, including the exhibits attached thereto, establishes unequivocally that Plaintiff's speech was purely job related. This argument is with merit.

4. Plaintiff also argues that delaying this Court's decision on the Motion to Dismiss "would be an indiscriminate creation of additional docket backlog." Plaintiff, however, offers no authority for the proposition that docket backlog is a proper consideration with respect to deciding whether to stay a case. It is not. The focus of the motion in this case is to prevent a waste of judicial resources. Because one of main causes of action at issue in this litigation is on appeal to the United States Supreme Court, and the decision by the Supreme Court could be dispositive of Plaintiff's First Amendment claim in this case, the Court should stay this case to permit the United States Supreme Court time to render its decision in the *Garcetti* case.

Respectfully submitted,

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and Steven Huber

Date: November 23, 2005

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DOROTHY HOULIHAN,

Plaintiff,

v.

SUSSEX TECHNICAL SCHOOL DISTRICT,  
SUSSEX TECHNICAL SCHOOL DISTRICT  
BOARD OF EDUCATION, SANDRA WALLS-  
CULOTTA, individually, and in her official  
capacity, and STEVEN HUBER, individually, and  
in his official capacity,

Defendants.

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)  
) C.A. No. 05-00194 JJF  
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)

) TRIAL BY JURY OF TWELVE  
) DEMANDED  
)

) **E-FILE**  
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)  
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**CERTIFICATE OF SERVICE**

I, William L. Doerler, Esquire, do hereby certify that on this 23<sup>rd</sup> day of November, 2005, a copy of the foregoing **DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR A STAY PENDING A DECISION BY THE UNITED STATES SUPREME COURT IN GARCETTI V. CEBALLOS** were served upon the following via electronic filing and/or regular mail:

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